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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

NO. 978

MARY K. RYAN, Assignee,

Petitioner,

v.

JACK VICKERS,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF COLORADO

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INDEX

	PAGE
Report of Case Below	1
Statement of Jurisdiction	2
Questions Presented for Review	2
Constitutional Provision Involved	3
Statement of the Case	3
Argument	6
I. The state courts' finding of mistake of fact and law, based on their erroneous conclusion that this Court's holding in the *McClellan* case applied retrospectively to the contract here in dispute and required subordination of Petitioner's previously vested landlord's lien to the Small Business Administration's lien, deprived the Petitioner of property without due process of law in violation of the Fourteenth Amendment	6
II. The Colorado courts erred in holding that the decision of this Court in *Small Business Administration v. McClellan*, 364 U.S. 446 (1960), was a binding precedent in this case and had to be applied to invalidate the contract on which this action was brought	9
Opinion of Court Below	10
Opinion and Judgment of Trial Court	10
Conclusion	10

Appendix A.	Opinion of the Colorado Supreme Court	11
Appendix B.	Applicable Statutes of West Virginia	19
Appendix C.	Portion of Petitioner's Brief in the Colorado Supreme Court	21
Appendix D.	Trial Court's Opinion and Judgment	29
Appendix E.	Petition for Rehearing in Colorado Supreme Court	31

CITATIONS

Cases:	PAGE
Bouie v. City of Columbia, 378 U.S. 347, 84 Sup. Ct. 1697 (1964)	9
Small Business Administration v. McClellan, 364 U.S. 446 (1960)	2, 5, 7, 9
In re Tennessee Pub. Co., 81 F.2d 463 (6th Cir. 1936)	8
Security-First Nat'l Bank v. Rindge Land and Navigation Co., 85 F.2d 557 (9th Cir. 1936)	8
County of Los Angeles v. Superior Court, 43 Cal. Rptr. 392 (2d Dist. Ct. of App. 1965)	8
Farmers Nat'l Bank & Trust Co. v. Berks County R.E. Co., 333 Pa. 390, 5 A.2d 94 (1939)	8
Federal Farm Mortgage Corp. v. Berzel, 69 N.D. 760, 291 N.W. 550 (1940)	8
Jensen v. Wilton E. Wilcox Lumber Co., 295 Ill. 294, 129 N.E. 133 (1920)	8
Mazo v. Burke, 101 W. Va. 700, 133 S.E. 378 (1926)	7
Pepsi-Cola Bottling Co. v. Indian Rock Bottling Co., 98 W. Va. 269, 126 S.E. 715 (1925)	7
Ryan v. Vickers, 406 P.2d 794 (Colo. 1965)	1
Constitution:	
U. S. Const. Amend. XIV, § 1	3
Statutes:	
28 U.S.C. 1257(3) (1964)	2
67 Stat. 232, as amended, 15 U.S.C. §§ 631-651	3
W. Va. Code Ann. § 37-6-11, 12 and 13 (1961)	3
Miscellaneous:	
Rule 19 of the Supreme Court of the United States Revised Rules (1954, as amended)	2
16 C.J.S. *Constitutional Law* § 216 (1956)	9
16A C.J.S. *Constitutional Law* § 631 (1956)	8

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Mary K. Ryan petitions the court to issue its Writ of Certiorari to the Colorado Supreme Court to review a judgment of that court on the basis of the matters hereinafter set forth:

(a) REPORT OF CASE BELOW.

The judgment sought to be reviewed is that of the Supreme Court of the State of Colorado dated October 4, 1965, upon which rehearing was denied November 8, 1965, in *Ryan v. Vickers*, 406 P.2d 794 (Colo. 1965). The opinion has not yet appeared in official report of the Colo-

rado Supreme Court. A copy of the opinion appears as Appendix A.

(b) STATEMENT OF JURISDICTION.

The grounds on which the jurisdiction of this court is invoked are based upon the judgment of the Supreme Court of the State of Colorado dated October 4, 1965, and the denying of a Petition for Rehearing on November 8, 1965, upon which Remittitur to the trial court was issued on November 8, 1965. The court has jurisdiction to review the judgment in question under the provisions of 28 U.S.C. 1257(3) (1964), and under the provisions of Rule 19 of the Supreme Court of the United States Revised Rules (1954, as amended), in that the Colorado Supreme Court has decided a federal question of substance not heretofore determined by this court and in addition has decided it probably not in accord with the applicable decisions of this court.

(c) QUESTIONS PRESENTED FOR REVIEW.

The questions presented for review are:

(1) Does the state courts' retroactive application of a judicial change in the law governing an existing contract, so as to take from the Petitioner the benefits of previously vested property rights in her contract with Respondent, deprive the Petitioner of property in violation of due process of law as guaranteed by the United States Constitution, Amendment XIV?

(2) Did the state courts err in holding that the decision of this court in *Small Business Administration v. McClellan*, 364 U.S. 446 (1960) had any relevence to the facts of this case to require any application, retroactive or otherwise, to invalidate the contract of the present parties?

(d) THE CONSTITUTIONAL PROVISION INVOLVED.

The constitutional provision which the case involves is as follows: U.S. Const. Amend. XIV, §1 ". . . nor shall any state deprive any person of life, liberty or property, without due process of law . . ."

(e) STATEMENT OF THE CASE.

In September of 1959, Petitioner's assignors, a West Virginia citizen and a West Virginia corporation (hereinafter called "landlord"), were the owners of certain land in the State of West Virginia, which land was under leases to J F Coal Corporation, a West Virginia corporation. Under the several leases, some of which antedated the Small Business Act of 1953, 67 Stat. 232, as amended, 15 U.S.C. §§ 631-651, J F Coal Corporation was obligated to pay certain minimum rents and royalties on coal mined to the landlord. These leases created a West Virginia statutory landlord's lien on the chattels of J F Coal Corporation. The Respondent and members of his family and business associates were stockholders in J F Coal Corporation. Prior to September 9, 1959, J F Coal Corporation became hopelessly in debt and as of such date owed the landlord approximately $75,000.00 in unpaid rent and royalties and also owed the Small Business Administration approximately $250,000.00 secured by a first chattel deed of trust on J F Coal Corporation's equipment located upon the landlord's land.

On September 9, 1959, the landlord claimed a landlord's lien on the chattels of J F Coal Corporation under the provisions of W. Va. Code Ann. §§ 37-6-11, 12 and 13 (1961). The material portions of these statutory provisions appear as Appendix B.

Under West Virginia law the statutory landlord's lien was, on September 9, 1959, a first lien on the chattels of J F Coal Corporation and as such was senior to the chattel deed of trust of the Small Business Administration. On